Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977
NO. 77-68

PARKING REALTY CO., AND EAN ERIE, FORMERLY HOPE VAN RIPER,

Petitioners,

vs.

HOWARD SHERLINE,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of Michigan.

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IN THE
SUPREME COURT OF THE UNITED STATES
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NO.

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Petitioners,

vs.

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Respondent.

Petition for Writ of Certiorari to the Supreme Court of Michigan.

To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the order and judgment of the Supreme Court of Michigan rendered in these proceedings on April 13, 1977.

Opinion Below

There was no formal opinion of the Supreme Court of Michigan denying leave for petitioner to appeal the trial judge's dismissal of petitioners' motion to disqualify the trial judge, said dismissal being on the ground solely that the motion was not presented by an attorney-at-law duly licensed to practice by the State of Michigan.

Jurisdication

The order or judgment of the Supreme Court of Michigan was entered on April 13, 1977. See Appendix A, to this petition. The order of judgment of the Court of Appeals for the State of Michigan was entered on April 19, 1977. See Appendix B. This Petition for Certiorari was filed less than 90 days from April 19, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

Questions Presented

One Howard Sherline brought suit against petitioner Parking Realty Co. and four other corporations, as well as two individuals, Ean Erie and Dorothy Turkel, in the Wayne County Circuit Court, Detroit, Michigan. In the course of the proceedings of this lawsuit, Ean Erie, an employee of Parking Realty Co., brought a motion on behalf of the corporation to disqualify a judge of the Wayne County Circuit Court, which motion was dismissed for the sole reason that Ean Erie was not a member of the State Bar of Michigan. Emergency leave to appeal the dismissal filed by Ean Erie and by Parking Realty Co., petitioners herein, was denied by the Court of Appeals of the State of Michigan on April 19, 1977, and the Supreme Court of Michigan on April 13, 1977.

The questions thus arising are:

1. Whether the action of the Michigan Courts in refusing to permit Ean Erie as an employee and managing agent to represent Parking Realty Co. in the Michigan Courts violates the Equal Protection Clause of the Fourteenth Amendment.

2. Whether the action of the Michigan Courts in refusing to permit Ean Erie as an employee and managing agent to represent Parking Realty Co. in the Michigan Courts violates the Due Process Clause of the Fourteenth Amendment.

Constitutional Provisions Involved

Constitution of the United States, Fourteenth Amendment, Section 1:

> ". . . Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

This case originated upon the filing of a complaint by one Howard Sherline, a minority stockholder of five defendant corporations, including petitioner, Parking Realty Co., alleging various acts of mismanagement of said corporations by individual defendants Ean Erie and Dorothy Turkel. Petitioner Ean Erie is an employee and managing agent of

petitioner Parking Realty Co. and of the other four defendant corporations, and was a Director and Officer of Petitioner Parking Realty Co. as well as three of the other corporations. Dorothy Turkel is a majority stockholder of petitioner and of the other four defendant corporations. Ean Erie is familiar with the activities of petitioner and the other four defendant corporations.

In the course of the lawsuit, Ean Erie on behalf of petioner and the other four corporations, brought a motion to disqualify the trail judge assigned to the case pursuant to Michigan procedure. Under Michigan law, the motion to disqualify a trial judge is heard by another judge of the same court.

On February 4, and on February 15, 1977, Judge Roman S. Gribbs heard petitioner's motion to disqualify the trial judge, Judge Wise, and dismissed the motion for the sole reason that it was brought by petitioner, Ean Erie, who was not a member of the Michigan State Bar and ruled that a corporation can only be represented by a duly licensed attorney. Judge Gribbs told petitioner Ean Erie that "...you may not speak on behalf of other legal entities or other legal persons unless you are qualified to do so and that means that you a licensed attorney. Therefore, I have ruled and I state again that you may appear on the 15th on your own behalf, but your arguments on behalf of the other defendants will not be considered and will not be heard because you cannot represent them." (Transcript page 33 of Hearing, February 3, and February 15, 1977.)

Pursuant to Michigan Laws, petitioners filed on application for emergency appeal to the Court of Appeals of the State of Michigan, which was denied on April 19, 1977, without opinion. Petitioners also made application for emergency appeal to the Supreme Court of Michigan, which application was denied by that Court without opinion on April 13, 1977. A copy of the order of the Supreme Court of Michigan appears as Appendix A herein, and a copy of the order of the Michigan Court of Appeals appears in Appendix B herein.

In petitioners' application for emergency appeal to the

Supreme Court of Michigan and to the Court of Appeals of Michigan, petitioners relied upon their rights under the Fourteenth Amendment of the Constitution of the United States.

Petitioners now have no remedy to permit petitioner Parking Realty Co. to have access to the Michigan Courts without an attorney licensed by the State of Michigan.

REASONS FOR GRANTING THE WRIT

1. *The refusal of the Michigan Courts to permit a corporation to represent itself in litigation is discrimination in judicial procedure which constitutes a denial of equal protection of the laws under the Fourteenth Amendment.*

A private corporation is a person within the meaning of the Fourteenth Amendment forbidding any state to deny to any person within its jurisdiction the equal protection of the laws.

Louis K. Liggett Co. v. Lee (1933) 288 U.S. 517, 53 S.CT. 481, 77 L. Ed. 926.

In the case at bar, the Michigan Supreme Court has refused to review the decision of the Wayne County Circuit Court denying petitioner Parking Realty Co. the right to represent itself in litigation pending therein by its employee and managing agent, Ean Erie. Yet the same courts permit an individual to represent himself or herself in court, or a partnership.

Also, the Michigan Courts permit an employee of a corporation to represent it in Small Claims Court. See MCLA Sec. 600.8408.

Thus, the Michigan Courts impose a highly burdensome requirement on a corporation litigant which is not imposed on an individual litigant, which requirement is imposed merely because the former is a corporation. Just like an individual litigant, a corporation may wish to avoid the expense of hiring an attorney-at-law, licensed as such, by the State of Michigan or may feel that it can equally well, if not better, represent itself in the particular litigation involved. There is

no reason or justification for such discrimination, which is essentially arbitrary.

This Court has held in the analogous case of *Kentucky Finance Corporation v. Paramount Auto Exchange Corporation* (1923) 262 U.S. 544, 43 S.CT.636, 67 L. Ed. 1112, that a state denies equal protection of its laws by requiring a corporation litigant but not an individual litigant, to produce its records in any county of the state. Such a state law constitutes judicial discrimination and is invalid under the Fourteenth Amendment.

Other decisions of this Court are to the same effect, such as, (*Truax v. Corrigan* (1921) 257 U.S. 312, 333, 42 S.CT. 124, 66 L. Ed. 254, (*Power Mfg. Co. v. Saunders* (1927) 274 U.S. 490, 47 S. CT. 678, 71 L. Ed. 1165, and *Smyth v. Ames* (1898) 169 U.S. 466, 522, 18 S. CT. 418, 42 L. Ed. 81.

The federal question presented in this petition is of crucial and critical importance to all corporations and should be resolved by this Court.

The making of such a distinction in representation between the Small Claims Court and the Circuit Court in Michigan with respect to a corporation violates the Equal Protection Clause of the Fourteenth Amendment as being arbitrary and unreasonable discrimination.

Individual litigants, both in civil and criminal cases of substantial complexity, are permitted to represent themselves without a licensed attorney. No reason exists to prevent a corporation to represent itself in civil cases whether in Small Claims Court or in courts of general jurisdiction.

Further, in the case of State Bar of Michigan v. Virginia Cramer (1976) 399 Mich. 116, the Michigan Courts allowed a partnership to represent itself in court without a licensed attorney. In California, any named partner in a partnership may represent the partnership in court without an attorney.

Since the several states generally require an attorney to represent a corporation, and not other business entities, such as partnerships, unincorporated associations, joint ventures,

and the like, no justification exists for the arbitrary discrimination against corporations with respect to self-representation. The alleged excuse by many states that persons of immoral character or disbarred attorneys might otherwise represent a corporation, is of no consequence and fallacious because such individuals may also be in business entities other than corporations and still be allowed to represent such entities in court. For the foregoing reasons, this Court should grant the within petition for Certiorari on the grounds of a denial of equal protection of the laws under the Fourteenth Amendment.

2. *The Continued Refusal of the Michigan Courts to Permit Petitioner Parking Realty Corporation Access to Its Courts in the Absence of Counsel is a Denial of Due Process of Law under the Fourteenth Amendment.*

A private corporation is a person within the meaning of the Fourteenth Amendment forbidding any state to deprive any person of life, liberty, or property without due process of law.

Pembina, etc., Co. v. Pennsylvania (1888) 125 U.S. 181, 8 S.CT. 734, 31 L. Ed. 650.

State action prohibited by the Fourteenth Amendment includes judicial action by the state, as held by this Court in *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 84 S.CT. 710, 11 L. Ed. 2d 686, stating the test of state action "... The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised." This Court held that it was immaterial that the law in question was applied to a civil action and that it was common law supplemented by a statute.

Denial of access to its courts by a state has been held by this Court to be a denial of due process under the Fourteenth Amendment in *Boddie v. Connecticut* (1971) 401 U.S. 371, 91 S.Ct. 780, 28 L. Ed.2d 113, stating that a "... state may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, preempt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so."

Although the *Boddie* case involved the right of an indigent plaintiff to litigate a divorce action without payment of fees and costs, the principle involved is directly applicable to the case at bar, which concerns the right of a corporate defendant in a civil case to appear in court without counsel.

Other instances of state action denying access by litigants to its courts, and thereby violating the due process clause of the Fourteenth Amendment, include *Smith v. Bennett* (1960) 365 U.S. 708, 81 S.Ct. 895, 6 L. Ed. 39, and *Procunier v. Martinez* (1974) 416 U.S. 396, 94 S.Ct. 1800, 40 L. Ed.2d 224.

In *Smith*, this Court held that a state law requiring payment of a filing fee before an indigent prisoner could file a petition for habeas corpus, deprived the prisoner of access to the state's courts and was unconstitutional under the due process clause of the Fourteenth Amendment. In *Procunier*, this Court held that California prison regulations, banning nonmembers of the bar from conducting interviews of prisoners on behalf of attorneys, were improper limitations on the prisoners' access to the courts and legal system of California, and thus unconstitutional under the due process clause of the Fourteenth Amendment.

Thus, the action of the Michigan courts in preventing petitioner Parking Realty Company from being represented by petitioner Erie in the Wayne County Circuit Court, and in requiring petitioner Parking Realty Company to be represented by a licensed attorney at law, has the effect of an improper limitation on petitioner Parking Realty Company's access to the Michigan courts and legal system. Without a licensed attorney, petitioner Parking Realty Company is

unable to appear or defend itself in the pending litigation in the Wayne County Circuit Court, and has been effectively denied access to the Michigan courts and legal system.

Such action by the Michigan courts is a clear violation of the due process clause of the Fourteenth Amendment and merits the intervention of this Court by granting the within Petition for Writ of Certiorari.

3. *No basis in law or fact exists to justify the Michigan Courts to continue unconstitutionally refusing a corporation access to their courts in the absence of a licensed attorney.*

The several states of the United States, including Michigan, have generally forbidden a corporation to appear in their courts and litigate without being represented by an attorney-at-law licensed as such by the state. See annotation at 19 A.L.R. 3d 1073.

The alleged reason usually given for the requirement of counsel is adherence to the common law rule that a corporation was considered incapable of appearing personally in any action. See 1 COKE LITT. First Amer. Edit. Sections 90, 66 (b).

Yet, many of the several states in the United States permit a corporation to be represented by a corporate officer or director, not an attorney, in Small Claims Court or in courts not of record. See annotation at 19 A.L.R. 3d 1073. Some states permit a corporation to appear through a director, officer, or an employee, whether or not an attorney-at-law, in certain courts or under certain conditions. For example, the State of California has recently provided, in 1976, in Section 87 of the California Code of Civil Procedure as follows:

> "Where a corporation is a party in the municipal or justice court it may appear through a director, officer, or an employee, whether or not such person is an attorney-at-law."

Under California Law, the Municipal Court is a court of general jurisdiction and is a Court of Record. See California Constitution, Article VI, Section 1, *Schwartz v. Burnett*

Pharmacy (1931) 112 Cal. App. Supp. 781, 789 (295 P. 508).

Even the State of Michigan permits a corporate stockholder or his assignee, purchaser, heir, devisee, administrator, or executor, of a corporation whose charter has expired, or any creditor or creditors, to appear and defend in the name of the corporation in a lawsuit against the expired corporation. See Michigan General Court Rules, Rule 779.5.

In the case of *Willheim v. Murchison* (1962) 206 F. Supp. 733 (SD NY), the District Court had permitted the stockholders of a corporation to bring a derivation action on behalf of the corporation and also act in propria persona without an attorney in legal proceedings therein. The court further held that the individual stockholder could present arguments common to other plaintiffs to the case as well as himself.

A similar situation is present here in the case at bar, since petitioner Ean Erie is presenting arguments common to her co-defendant, petitioner Parking Realty Co., a Michigan corporation.

There is no good reason in law or fact why petitioner Parking Realty Co. should not be permitted to have petitioner Ean Erie represent it in the pending litigation in the Wayne County Circuit Court. There are numerous instances, contained in the annotation at 19 A.L.R. 3d 1073, where corporations have been persmitted to have agents represent them who are not attorneys, in court.

The continued refusal of the Michigan Courts to permit petitioner Ean Erie to represent petitioner Parking Realty Co. is not only a violation of due process and equal protection under the Fourteenth Amendment, but is also contrary to the growing trend of the several states of the United States to permit, more and more, corporations to be represented in court without a licensed attorney.

For example, in *Sellent-Repent Corporation v. Queens Borough Gas and Electric Co.* (1936) 290 NYS 887, 160 Misc. 920, the Court allowed a corporation to sue without the appearance of a licensed attorney on the grounds that a corporation was entitled to sue as a natural person.

In *A. Victor & Co. v. Sleininger* (1939) 9 NYS 2d 323, 255 App. Div. 673, the Court held that a corporation had power to sue or defend on its own behalf without an attorney. The case of *Milmore v. Meyer* (1939) 15 NYS 2d 899, allowed a corporation to sue in a justice court without an attorney.

In *Swartzwelder v. Freeport Coal Co.* (1948) 131 W. Va. 276, 46 SE 2d 813, the Court permitted the president of the defendant corporation to appear in court without an attorney for pleading purposes.

In Michigan, the opinions of the Michigan Attorney General (1928-30) have held that one is not required to be a licensed attorney to represent a party in justice court and that the justice court has no power to adopt a rule forbidding a non-attorney to appear on behalf of a litigant.

In 1968, the Georgia legislature enacted a new Georgia Business Corporations Code, which permits a corporation in Title 22, Section 22-202 (3)(iii) "To sue and be sued, complain and defend in all courts, and to participate in any judicial, administrative, arbitrative or other action or proceeding."

This statute was followed by the Georgia Courts in *Knickerbocher Tax Systems, Inc. v. Texaco, Inc.* (1974) 130 Ga. App. 383, 203 SE 2d 290, allowing a corporation to represent itself in court without a licensed attorney.

In *Phoenix Mut. Life Ins. Co. v. Radcliffe on the Delaware, Inc.* (1970) 439 Pa. 169, 266 A. 2d 698, the Court allowed an officer of the defendant corporation to represent it at trial, though not an attorney, in the absence of any objection and where the officer had authority to act.

In support of its holding, the Pennsylvania Court stated the following at pg. 166 of 439 Pa.:

> "As explained by Chief Justice MARSHALL in the opinion of *Osborn v. President, etc., United States* Bank, 9 Wheat. 738, 22 U.S. 738, 6 L. Ed. 204 (1824), as quoted in the Third Circuit case of *Simbraw, Inc. v. United States,* 367 F. 2d 373 (1966):
>
> 'Natural persons may appear in court, either by themselves, or by their attorney. But no man has a right to

appear as the attorney of another, without the authority of that other. In ordinary cases, the authority must be produced, because there is, in the nature of things, *prima facie* evidence that one man is in fact the attorney of another. The case of an attorney-at-law, an attorney for the purpose of representing another in court, and prosecuting or defending a suit in his name, is somewhat different. The power must indeed exist, but its production has not been considered as indispensable. Certain gentlemen, first licensed by government, are admitted, by order of a court, to stand at the bar, with a general capacity to represent all the suitors in the court. The appearance of any one of these gentlemen in a cause, has always been received as evidence of his authority? and no additional evidence, so far as we are informed, has ever been required. This practice, we believe, has existed from the first establishment of our courts, and no departure from it has been made in those of any state, or of the Union."

Since authority existed for the officer to represent the corporation, the Pennsylvania Court held that such representation was proper without an attorney.

The same situation exists in the case at bar. No question has been raised as to the authority of petitioner, Ean Erie, to represent petitioner Parking Realty Co. so far as the corporation is concerned. The Michigan Courts have shown no reason in law or fact to hold otherwise, or to forbid petitioner, Ean Erie, from representing petitioner Parking Realty Co.

Although in *Detroit Bar Assoc. v. The Union Guardian Trust Co.* (1938) 282 Mich. 707, 711, the Michigan Supreme Court held that a corporation could appear only by attorney, the Court had no statutory authority or other Michigan authority to support its ruling, but relied solely on two out-of-state cases, one in Colorado and the other in New Jersey.

Moreover, in the case of a dissolved corporation, the State of Michigan allows an individual to appear in the name of the corporation. See Michigan Court Rule No. 779.5.

For the foregoing reasons, no justification exists in law or fact to permit the Michigan Courts to continue to so discriminate against a corporation which constitutes a violation of the due process clause of the Fourteenth Amendment.

CONCLUSION

The requirement by the Michigan Courts that petitioner Parking Realty Co. must have a licensed attorney represent it in the pending litigation in the Wayne County Circuit Court is a violation of the equal protection of the laws as guaranteed under the Fourteenth Amendment. The same action of the Michigan Courts is also a violation of the due process clause of the Fourteenth Amendment. This action by the Michigan Courts has no justification in law and fact and is of crucial and critical importance to corporations throughout the United States.

In view of the substantial nature of these federal questions, this Court should exercise its discretion and grant the Writ of Certiorari sought by this petition herein.

Respectfully submitted,

JOHN JOSEPH HALL
Attorney for Petitioners

APPENDIX A

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 13th day of April in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable
THOMAS GILES KAVANAGH,
Chief Justice.

G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

CR 19-420
CR 19-421
CR 19-422

PARKING REALTY COMPANY, et al.,

Plaintiffs-Appellants,

v 59550-59552 COA: 77-437
LC: 75-071-519-CK

WAYNE COUNTY CIRCUIT COURT JUDGE,

Defendant-Appellee.

On order of the Court, the applications for emergency appeal or, in the alternative, claims for superintending control, are considered, and the same are hereby DENIED, because plaintiffs-appellants have failed to persuade the Court that the questions presented should now be reviewed by the Court or that appellants will suffer substantial harm by awaiting final judgment or determination before taking an appeal.

STATE OF MICHIGAN — ss.

I, Harold Hrag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 13th day of April in the year of our Lord one thousand nine hundred and seventy-seven.

Clerk.

APPENDIX B

In these causes applications for leave to appeal and motions for immediate consideration are filed by defendants-appellants, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motions for immediate consideration be, and the same are hereby GRANTED.

IT IS FURTHER ORDERED that the applications be, and the same are hereby DENIED for failure to persuade the Court of the need for immediate appellate review, and for the further reason that the applications and briefs in support thereof are grossly lacking in compliance with GCR 1963, 806.1 and 813.

Judge Gillis not participating.

STATE OF MICHIGAN) ss

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 19th day of April in the year of our Lord one thousand nine hundred and seventy-seven.

Clerk